

OCT 28 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

PIERRE CLIFTON MARSHALL,

Defendant - Appellant.

No. 08-50316

D.C. No. 2:92-cr-00200-PSG

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, District Judge, Presiding

Submitted October 13, 2009^{**}

Before: B. FLETCHER, LEAVY, and RYMER, Circuit Judges.

Pierre Clifton Marshall appeals from the district court's order denying his 18 U.S.C. § 3582(c)(2) motion for reduction of sentence. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Marshall contends that he is entitled to a full resentencing proceeding pursuant to § 3582(c)(2), notwithstanding the fact that his sentencing range has not been lowered by the Sentencing Commission. Marshall argues that he is entitled to be resentenced because his conviction never became final due to the district court's failure to enter an amended judgment following this court's partial reversal on direct appeal. There is no authority to support the proposition that the lack of an amended judgment confers jurisdiction upon the district court to resentence a defendant under § 3582(c)(2). The district court did not err in denying the motion. *See United States v. Leniear*, 574 F.3d 668, 673 (9th Cir. 2009).

To the extent that he seeks to collaterally attack the judgment, that claim is properly raised in a motion pursuant to 28 U.S.C. § 2255.

AFFIRMED.